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IN THE

Supreme Court of the United States

October Term, 1935

No. 636

JAMES WALTER CARTER, *Petitioner*

v.

CARTER COAL COMPANY, GEORGE L. CARTER as Vice-President and a Director of Said Company, *et al.*

No. 649

R. C. TWAY COAL COMPANY, *et al.*

v.

SELDEN R. GLENN, Individually and as Collector of Internal Revenue, etc.

BRIEF OF THE STATE OF OHIO AMICUS CURIAE

In Support of the Constitutionality of the Bituminous Coal Conservation Act of 1935 (Guffey Coal Act)

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by appointment of
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PRESS OF W. F. ROBERTS COMPANY, WASHINGTON, D. C.

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PRELIMINARY STATEMENT

The purpose of the State of Ohio in filing this brief in support of the constitutionality of the Bituminous Coal Conservation Act of 1935 is to make

known to this Honorable Court its vital interest in the questions involved in this case, its dependence on the bituminous coal industry and the impossibility of proper regulation of the industry by the State of Ohio.

In the year 1935 approximately 30,000 citizens of Ohio were gainfully employed in the production of coal within its borders at an estimated annual payroll of $30,000,000. In the years between 1923 and 1935 the annual wage paid to persons engaged in this industry is estimated as low as $15,000,000.

Ohio coal mines produced in 1935 about 20,000,000 tons of coal, of which about 10,000,000 tons were either exported for consumption elsewhere or sold to railroads. Ohio consumed in 1935 approximately 40,000,000 tons of coal, of which around 30,000,000 tons were imported from other coal producing states.

Ohio coal producing companies have an estimated present investment in equipment alone of about $40,000,000, exclusive of coal deposits owned by such companies, and in the years between 1922 and 1935 a large number of coal mines within the state have been closed down and cost production reduced over 50% with a consequent loss of investment and employment facilities.

Immediately prior to the enactment of the National Industrial Recovery Act the labor cost of coal production per ton was about $1.10; under the operation of N.R.A. this same cost rose to an average of about $1.67 per ton, contributing substantially to employment and increased earnings to those employed in the industry.

As a large coal producing state with thousands of its citizens engaged in this industry, and as a great industrial state whose industries depend upon a constant supply of coal, Ohio has a definite need of regulation of the coal industry by the Congress of the United States, since, as a state, it can not regulate an industry so largely engaged in interstate commerce.

The unregulated and unrestricted cut-throat competition between coal producing regions, and between individual producers has brought ruin and distress to producer and laborer alike and it is this condition that the Bituminous Coal Conservation Act of 1935 seeks to correct.

ARGUMENT

I.

Regulation of the Bituminous Coal Industry is Necessary

The desperate plight of the bituminous coal industry is not a recent development. Between 1923 and 1933 its demoralization reached an acute stage. During the period from 1923 to 1929, when practically all other industries showed profits, the coal industry as a whole showed deficits. Many producers were forced into bankruptcy or receivership. The period following 1924 saw the gradual breakdown of wage agreements between producers and miners. The condition existing is summarized in the language of the present Chief Justice of this Court in the case of *Appalachian Coals, Inc.*, v. *United States of America,* reported in 288 United States, 344, and where on page 372 the following appears:

> "The evidence leaves no doubt of the existence of the evils at which defendants' plan was

aimed. *The industry was in distress. It suffered from over-expansion and from a serious relative decline through the growing use of substitute fuels. It was affected by injurious practices within itself, practices which demanded correction.* If evil conditions could not be entirely cured, they at least might be alleviated. The unfortunate state of the industry would not justify any attempt unduly to restrain competition or to monopolize, but the existing situation prompted defendants to make, and the statute did not preclude them from making, an honest effort to remove abuses, to make competition fairer, and thus to promote the essential interests of commerce. *The interests of producers and consumers are interlinked. When industry is grievously hurt, when producing concerns fail, when unemployment mounts and communities dependent upon profitable production are prostrated, the wells of commerce go dry."*

The same conditions described by this language prevailed in the coal fields of Ohio. Over-production, price slashing, wage cutting, all the results of unrestrained competition, cried aloud for regulation.

The codes adopted by the bituminous coal industry under the N.R.A. demonstrated that the major evils could be eliminated by a uniform authority with the power to fix minimum prices and to require fair treatment of labor.

II.

The State of Ohio Cannot Legally Provide the Necessary Regulation

It can not seriously be denied that the sale, marketing and distribution of bituminous coal are inter-

Italics ours unless otherwise noted.

state in character. The following excerpt from the case of *Furst* v. *Brewster*, 282 U. S. 493, clearly defines interstate commerce and declares void any state statute which lays a burden on the privilege of engaging in interstate commerce:

> "The ordering and shipment of the goods constituted interstate commerce, and the obligation to pay and the right to recover the amount due, according to the contract pursuant to which the goods were sent, arose in the course of that commerce. In *International Text-Book Co.* v. *Pegg*, 217 U. S. 91, 107, this court quoted with approval the language of the circuit court of appeals for the eighth circuit, speaking by Judge Sanborn, in *Butler Bros. Shoe Co.* v. *United States Rubber Co.*, 156 Fed. 1, 17, a case of consignment to a factor, that 'all interstate commerce is not sales of goods. *Importation into one state from another is the indispensable element, the test, of interstate commerce; and every negotiation, contract, trade, and dealing between citizens of different states, which contemplates and causes such importation, whether it be of goods, persons, or information, is a transaction of interstate commerce. Such commerce comprehends all the component parts of commercial intercourse between different states, and, according to established principle, any state statute which obstructs or lays a direct burden on the exercise of the privilege of engaging in interstate commerce is void under the commerce clause.*" *Furst* v. *Brewster*, 282 U. S. 493, 497-498.

See also *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50, 53-55, and
Stafford v. *Wallace*, 258 U. S. 495, 515-516.

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The Ohio Constitutional Convention in 1912 approved an amendment giving the legislature full powers over the methods of mining and marketing coal, and the amendment was subsequently approved by vote of the people. Apparently, regulation was considered at that early date, but the fact that the powers conferred by the amendment were not acted upon would indicate that the legislature was aware of the impossibility of dealing with the matter in a practical way.

The interstate commerce clause of the United States Constitution does not bar the State of Ohio from fixing minimum prices in intrastate business, but such an action on the part of the state would lead to the certain destruction of the industry affected, by competition from without the state.

In *Baldwin* v. *Seelig,* 294 U. S. 511, the case turned upon the constitutionality of a portion of the New York Milk Control Bill, making it unlawful to sell milk in New York which was produced and purchased outside of the state at less than the minimum producer price established by the state for purchase of milk within the state. Plaintiff had bought milk in Vermont at less than the minimum New York producer price, and had shipped it to New York. This Court held that regulation of the price of milk comprising interstate commerce was outside the power of New York, entirely apart from the question of whether the milk remained in the original container or otherwise. See also *Lemke* v. *Farmers Grain Co.,* 258 U. S. 50.

The State of Ohio asks this Honorable Court to recognize the fact that the sale, marketing, and dis-

tribution of bituminous coal are interstate in character and not susceptible to regulation by the states.

III.

The State of Ohio Can Not Regulate Labor Relations In The Bituminous Coal Industry

The commerce clause of the Federal Constitution stands in the way of the State of Ohio in the matter of effective minimum wage regulation by the State. The State is interested in maintaining labor standards, but due to the interstate character of the coal industry, citizens of the State of Ohio are forced into wage competitions with other states in which the labor standards maintained are far lower than those sought to be maintained in Ohio. If Ohio can not, therefore, protect its citizens in this regard, it should be recognized that such regulation is beneficial to the industry as a whole and the power of the Congress to legislate for such regulation should be upheld. In the past such wage agreements as have existed have been interstate in character. Under the N.R.A. a wage agreement known as the Appalachian Wage Agreement, effective on October 2, 1933, running until April 1, 1934, and covering the states of Pennsylvania, Ohio, West Virginia and Virginia, as well as eastern Kentucky and northeastern Tennessee, was worked out and was at its expiration extended on three separate occasions. This appears to be the only logical method of effecting wage agreements, since the states can not successfully legislate on this subject.

In conclusion, the State of Ohio welcomes Federal regulation of this ailing industry; Ohio welcomes

Federal assistance which it is unable to render to the industry, itself. The bituminous coal industry is vital to the maintenance of the welfare of its people.

THE CONCLUSION

The State of Ohio respectfully submits that the Bituminous Coal Conservation Act of 1935 is a lawful measure for the regulation of interstate commerce in bituminous coal and that the Act is constitutional and valid.

THE STATE OF OHIO,
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